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No. 85-1488

In the Supreme Court of the United States

OCTOBER TERM, 1985

GIOVANNI LIGNAROLO AND MARIO LIGNAROLO,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

SARA CRISCITELLI
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Whether the evidence was sufficient to prove that petitioners violated the Travel Act, 18 U.S.C. 1952(a)(1).

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OPINION BELOW

The decision of the court of appeals (Pet. App. 1-18) is reported at 770 F.2d 971.

JURISDICTION

The judgment of the court of appeals was entered on September 10, 1985. A petition for rehearing was denied on November 14, 1985 (Pet. App. 19). The petition for a writ of certiorari was filed on March 4, 1986, and is therefore substantially out of time under Rule 20.1 of the Rules of this Court.[1]

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[1]The petition was due on January 13, 1986, and is therefore almost two months out of time. Counsel for petitioners has not filed a notarized statement setting forth details of the mailing, as required under these circumstances by Sup. Ct. R. 28.2.

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner Giovanni Lignarolo was convicted on three counts and petitioner Mario Lignarolo on one count of interstate travel with intent to distribute the proceeds of an unlawful activity, in violation of the Travel Act, 18 U.S.C. 1952(a)(1). Petitioners were also convicted on one count of conspiracy to violate the Travel Act, in violation of 18 U.S.C. 371. They were sentenced to concurrent terms of three years' imprisonment, all but six months of which were suspended, to be followed by two years' probation. The court of appeals affirmed. Pet. App. 1-18.

1. The evidence at trial is described in detail in the opinion of the court of appeals. Pet. App. 2-7. Briefly, the evidence established that petitioners knowingly laundered $3.5 million in proceeds of a "massive and excessively profitable marijuana operation." *Id.* at 14-15. Petitioners laundered these funds by depositing them as cash in a New York bank account and then transferring them by wire to other accounts, chiefly in Miami. *Id.* at 2.

Five transactions from December 1979 to March 1980 formed the basis for the indictment. In the first, Mario Lignarolo brought $350,000 in cash to the New York bank. He explained to an undercover FBI agent that there would be several more deposits because the proceeds from the underlying marijuana shipment totalled $2.6 million. The funds were deposited in New York and wired to Miami, where they were withdrawn by a check payable to a Colombian business firm. Pet. App. 4. The second transaction involved $700,000 in cash, which was laundered in a similar manner. *Id.* at 5. During the third transaction, which involved $1 million, Giovanni Lignarolo, Mario's brother, explained to an undercover agent that there would have

been more money except that the marijuana traffickers were having difficulty making sales. *Ibid.* The final two transactions involved a total of $1.5 million. *Id.* at 6-7.

2. The court of appeals affirmed petitioners' convictions. Pet. App. 1-18. The court held that neither the language nor the legislative history of the Travel Act supported petitioners' argument that the government was required to show that they were co-conspirators in the marijuana trafficking enterprise. Pet. App. 8-13. The court also held that the evidence was sufficient to show that that the funds ultimately were transferred to participants in the marijuana distribution scheme. *Id.* at 17-18.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore unwarranted.

1. Petitioners argue first (Pet. 7-14) that the Travel Act requires proof that they were co-conspirators in or otherwise closely associated with the illegal drug trafficking enterprise that generated the funds that they laundered. The court of appeals, in an opinion on which we rely, carefully considered and correctly rejected this contention as well as petitioners' claim of a conflict with *United States* v. *Gibson Specialty Co.*, 507 F.2d 446 (9th Cir. 1974). Pet. App. 8-13.

Petitioners were charged with violating 18 U.S.C. 1952(a)(1), which proscribes interstate travel with "intent to * * * distribute the proceeds of any unlawful activity," followed by such distribution. Petitioners do not now dispute that the government proved that they "traveled from Miami to New York City for the express purpose of collecting proceeds generated by substantial marijuana trafficking, that [they] collected currency of the United States which [they] knew constituted such proceeds, and that [they] distributed that currency by causing the undercover agents to

deposit it in * * * [a New York bank account] and then to wire it to various bank accounts in New York City and Miami." Pet. App. 9. Nor do petitioners now dispute that the marijuana distribution scheme constituted an unlawful activity within the meaning of the statute. See *id.* at 14-16. Rather, they contend that Section 1952(a)(1) requires proof that they were co-conspirators in that scheme.

The plain language, legislative history, and purpose of the Travel Act demonstrate that petitioners' contention is without merit. By its terms, Section 1952(a)(1) makes no mention of involvement with the underlying illegal activity apart from the distribution of proceeds from that activity, as petitioners recognized below. Pet. App. 9. Similarly, the legislative history of the statute demonstrates that it was intended "to impede the clandestine flow of profits from criminal ventures." S. Rep. 644, 87th Cong., 1st Sess. 4 (1961); H.R. Rep. 966, 87th Cong., 1st Sess. 4 (1961); see also *United States* v. *Nardello,* 393 U.S. 286, 292 (1969). Attorney General Kennedy explained that the Act would allow the federal government "to prosecute the courier who carries the funds across State lines," such as "the messenger [who] carrie[s] the profits of [a] numbers racket from the scene of operations [New York] to the resort town [Miami]." *Legislation Relating to Organized Crime: Hearings Before Subcomm. No. 5 of the House Comm. on the Judiciary* (*Hearings*), 87th Cong., 1st Sess. 21, 22 (1961); see also *id.* at 24 (Act would reach "interstate travel * * * to deliver the profits of an illegal enterprise"). Petitioners fit precisely within this category of intended targets of the Act.[2]

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[2]The legislative history on which petitioners rely (Pet. 9-11) is not to the contrary. While the Attorney General referred in his testimony to the " 'bagman' " who "acts as a clearinghouse and accountant for the group" (*Hearings* 22), there is no indication that he intended by this to exclude from the coverage of the statute "courier[s]" (*ibid.*) and "messenger[s]" (*id.* at 21), such as petitioners, who deliver the profits of an

Petitioners' claim (Pet. 12-14) of a conflict with *United States* v. *Gibson Specialty Co., supra,* was correctly rejected by the court below. Pet. App. 10-11. That case involved a different subsection of the Travel Act, 18 U.S.C. 1952(a)(3), which requires that the travel be undertaken with the intent to "promote * * * or facilitate the promotion * * * of any unlawful activity." See *Gibson Specialty Co.*, 507 F.2d at 449 ("intent to facilitate a criminal venture is expressly made part of the offense"). No such requirement appears in subsection 1952(a)(1).[3] Moreover, that case involved defendants who sold bingo equipment, which had legitimate uses, by mail to persons with whom they had no other contacts. Petitioners, by contrast, had extensive personal contacts with narcotics traffickers, and their "service" —the laundering of millions of dollars in cash—can scarcely be described as a common legitimate business practice. For all these reasons, *Gibson Specialty Co.* would not

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illegal enterprise without being involved in its bookkeeping. The Senate report, S. Rep. 644 (which petitioners misquote and erroneously cite as S. Rep. 655), establishes only that the Act would not impede interstate travel except when undertaken with the unlawful intent specified in the statute.

[3]Petitioners seek to avoid this obvious distinction solely by focusing on the word "otherwise" in subsection 1952(a)(3), which, they claim, suggests that Congress intended to require proof of promotion or facilitation under subsections (1) and (2) as well. The most natural reading of the entire statute, however, is that Congress recognized that the distribution of illegal profits, made unlawful under subsection (1), commonly would have the effect of promoting or facilitating the underlying enterprise. The plain language of the statute makes clear that Congress did not intend at the same time to impose an additional proof requirement under that subsection. Cf. *United States* v. *Locke,* No. 83-1394 (Apr. 1, 1985), slip op. 18; see also Pet. App. 13 n.10 ("the laundering of money [often] is an essential component of drug trafficking; as such, it facilitates the business").

have required the reversal of petitioners' convictions under 18 U.S.C. 1952(a)(1) in the Ninth Circuit.[4]

2. Petitioners also contend (Pet. 14-16) that the court of appeals erred in finding that the evidence was sufficient to show that the laundered funds were "distributed" within the meaning of 18 U.S.C. 1952(a)(1). The court of appeals correctly decided this factbound contention against petitioners, and it plainly merits no further review. The evidence showed that both petitioners were aware that the massive sums of money that they were laundering came from sales of Colombian marijuana and that those funds were being deposited in New York for transfer to Miami. Pet. App. 2-7, 17. Petitioners' knowing participation in the series of transfers of funds from New York to Miami clearly constituted a "distribution" of those funds.

Petitioners' claim (Pet. 15-16) of a conflict with *United States* v. *Lightfoot*, 506 F.2d 238 (D.C. Cir. 1974), is unavailing. In *Lightfoot*, the court held that the purchase of an automobile with the proceeds of an illegal activity did not constitute the distribution of those proceeds within the meaning of the statute. See *id.* at 241 ("The word 'distribute' simply does not encompass the concept of buying an article in the normal course of trade."). In this case, by contrast, the evidence showed that the transfer of the laundered money was not an expenditure of funds for purchased goods, but was part of the process of "moving" the profits from a series of drug sales. The marijuana had been exported from Colombia and sold in the United States, and the multi-million dollar proceeds were deposited back into Miami accounts, at least one of which belonged to a

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[4]We also note that *Gibson Specialty Co.* has had little influence on the development of the law. Apart from the decision below, it has been cited in the courts of appeals only twice, both times for unexceptional propositions irrelevant to this case.

Colombian company. Under these circumstances, the court of appeals was surely correct in concluding (Pet. App. 17) that it was permissible to infer, simply as a matter of economics, that the funds were intended to be recycled to members of the marijuana enterprise, who were responsible for procuring, importing, and selling the drugs.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

CHARLES FRIED
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

SARA CRISCITELLI
Attorney

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